



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.08.2018

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.P.(MD).No.11574 of 2017 in
C.R.P.(NPD) (MD)No.SR46813 of 2017

1. Minor A.Vishnu
2. Minor A.Thaarini

(Minor petitioners are represented by
their mother and natural guardian/
next friend Sharmila Devi)

... Petitioners/Petitioners

Vs.

1. S.Arun
2. R.S.Tamilselvan
3. G.Gopalakrishnan

... Respondents/Respondents

PRAYER in C.M.P.(MD)No.11574 of 2017 : Petition is filed under Section 5 of the Limitation Act, to condone the delay of 981 days in filing the Revision against the fair and decreetal order dated 15.12.2014 in I.A.No.144 of 2013 in O.S.No.12 of 2011 on the file of the learned I Additional District Judge, Madurai.

PRAYER IN C.R.P.(NPD) (MD)No.SR46813 of 2017: Petition is filed under Section 115 of C.P.C., to call for the records pertaining to the I.A.No.144 of 2013 in O.S.No.12 of 2011, dated 15.12.2014 on the file of the learned I Additional District Judge, Madurai and set aside the same as illegal.

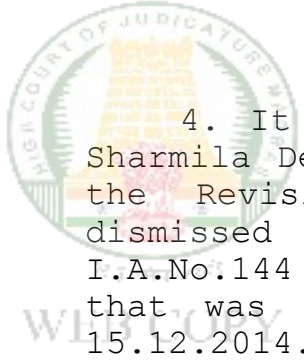
For Petitioners : Mr.V.Ramakrishnan
For Respondents : No appearance.

O R D E R

This petition has been filed for condoning the delay of 981 days in filing this Civil Revision petition.

2. The Civil Revision petition is preferred against the Order dated 15.12.2014 made in I.A.No.144 of 2013 in O.S.No.12 of 2011 on the file of the learned I Additional District Judge, Madurai.

3. The suit is one for partition and separate possession. The first defendant is the father of the plaintiffs. The plaintiffs were represented by their mother. Defendants 2 and 3 are purchasers of the suit property. The Revision petitioners filed I.A.No.144 of 2013 for reopening the suit which was dismissed as not pressed.



4. It is not in dispute that the plaintiffs' mother, namely, Sharmila Devi instructed the counsel to not press the suit. As per the Revision petitioners' instruction only, the Court below dismissed the suit as not pressed on 14.03.2011. The present I.A.No.144 of 2013 was filed on 21.08.2013 for reopening the suit that was disposed of on 14.03.2011. The same was dismissed on 15.12.2014. Challenging the same, the Civil Revision petition has been filed.

5. The learned counsel for the Revision petitioners submitted that since the interests of minors are involved, the leave of the Court must be obtained in terms of Order 32 Rule 7(2) of C.P.C.

6. This Court is of the view that the suit was instituted only by the said Sharmila Devi in the year 2011. It was, she who instructed the counsel to not press the suit. The suit was dismissed as not pressed as early as on 14.03.2011. There was a delay of more than two years in filing I.A.No.144 of 2013. The said application was dismissed on 15.12.2014. Again there is a delay of 981 days in filing the Civil Revision petition. The conduct of the said Sharmila Devi is clearly not bona fide. If the minors are of the view that their interests have been unlawfully dealt with, it is of course open to them to institute separate proceedings for filing their legal rights in the manner known to law. Dismissal of this condone delay petition will not have any bearing on their rights. In the affidavit filed in support of this Civil Miscellaneous petition, sufficient cause for condonation has not been made out.

7. With these observations, the Civil Miscellaneous petition stands dismissed. Consequently, the Civil Revision petition stands dismissed at SR stage itself.

Sd/-

Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1. The I Additional District Judge, Madurai.
2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+1cc to M/S.V.Ramakrishnan, Advocate SR.No. 77722

+2cc to M/S.S.P.Sonai Samy, Advocate SR.No. 77634

ORDER MADE IN
C.M.P. (MD) .No.11574 of 2017 in
C.R.P. (NPD) (MD) No.SR46813 of 2017
07.08.2018